

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE DEPARTMENT OF HUMAN SERVICES

In the Matter of the Denial of the  
Application by Elizabeth Buzzard for a  
Family Child Care License

**ORDER GRANTING  
SUMMARY DISPOSITION  
AND RECOMMENDATION**

Michelle Meyer, Assistant Benton County Attorney, on behalf of the Minnesota Department of Human Services (Department) filed a Motion for Summary Disposition on April 19, 2013. With the consent of the Department, Elizabeth Buzzard (Applicant) was given until 4:30 p.m. on May 16, 2013, to file her response. She did not file a response.

**STATEMENT OF THE ISSUES**

Should the Applicant be denied a family child care license because she resides with her husband, a person disqualified from having direct contact with, or access to, persons served by Department licensed programs?

**SUMMARY OF RECOMMENDATION**

The Administrative Law Judge concludes that the Applicant's license application should be denied under Minn. Stat. § 245A.05.

Based upon all of the proceedings herein, and for the reasons set forth in the Memorandum, attached hereto and incorporated by reference, the Administrative Law Judge makes the following:

**RECOMMENDATION**

**IT IS HEREBY RECOMMENDED that:**

1. The Commissioner **GRANT** the Department's Motion for Summary Disposition;
2. The Commissioner **AFFIRM** the denial of Elizabeth Buzzard's child care license.

Dated: May 28, 2013

s/Amy J. Chantry  
\_\_\_\_\_  
AMY J. CHANTRY  
Administrative Law Judge

## NOTICE

This report is a recommendation, not a final decision. The Commissioner of Human Services (the Commissioner) will make the final decision after a review of the record. Under Minn. Stat. § 14.61, the Commissioner shall not make a final decision until this Report has been made available to the parties for at least ten calendar days. The parties may file exceptions to this Report and the Commissioner must consider the exceptions in making a final decision. Parties should contact Debra Schumacher, Administrative Law Attorney, PO Box 64941, St. Paul MN 55164, (651) 431-4319 to learn the procedure for filing exceptions or presenting argument.

The record closes upon the filing of exceptions to the Report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and Administrative Law Judge of the date the record closes. If the Commissioner fails to issue a final decision within 90 days of the close of the record, this Report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. In order to comply with this statute, the Commissioner must then return the record to the Administrative Law Judge within ten working days to allow the Judge to determine the discipline imposed.

Under Minn. Stat. § 14.62, subd. 1, the Commissioner is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

## MEMORANDUM

### Jurisdiction

The Administrative Law Judge and the Department have jurisdiction pursuant to Minn. Stat. §§ 14.50, 245A.05 and 245A.08. The Applicant was given notice of the hearing in this matter and the Department has complied with all relevant procedural requirements.

### Procedural Standard

The request for summary disposition is analogous to a motion for summary judgment under Rule 56.02 of the Minnesota Rules of Civil Procedure. Summary disposition of a claim is appropriate when there is no genuine issue of material fact and one party is entitled to a favorable decision as a matter of law.<sup>1</sup> A material fact is one that is substantial and will affect the result or outcome of the proceeding, depending upon the determination of that fact.<sup>2</sup> In considering the Motion for Summary Disposition, an Administrative Law Judge must view the evidence in the light most favorable to the nonmoving party.<sup>3</sup>

---

<sup>1</sup> Minnesota Rules of Civil Procedure, Rule 56.03.

<sup>2</sup> *Highland Chateau v. Minnesota Department of Public Welfare*, 356 N.W.2d 804 (Minn. Ct. App. 1984).

<sup>3</sup> *Grandahl v. Bulluck*, 318 N.W.2d 240 (Minn. 1982); *Nord v. Herreid*, 305 N.W.2d 337 (Minn. 1981); *American Druggists Insurance v. Thompson Lumber Co.*, 349 N.W. 2d 569 (Minn. 1989).

To obtain summary disposition, the moving party must establish that there is no genuine issue of material fact. The initial burden is on the moving party to establish a *prima facie* case for the absence of material facts at issue.<sup>4</sup> Once the moving party has established a *prima facie* case, the burden shifts to the nonmoving party.<sup>5</sup> When the movant also bears the burden of persuasion on the merits at trial, as the movant does in this case, its burden on summary disposition is to present “credible evidence” that would entitle it to a directed verdict if not controverted at trial.<sup>6</sup> To defeat a motion for summary disposition, the nonmoving party must show that specific facts are in dispute that have a bearing on the outcome of the case.<sup>7</sup> The existence of a genuine issue of material fact must be established by the nonmoving party by substantial evidence; general averments are not enough to meet the nonmoving party’s burden.<sup>8</sup>

## Facts

There are no material facts in dispute. The Applicant has not presented any evidence that would refute the facts alleged and documented by the Department.

The Applicant applied for a family child care license on July 23, 2012.<sup>9</sup> As part of her application, the Applicant listed the family members living in her household on the application.<sup>10</sup> She included her husband, Christopher Buzzard.<sup>11</sup> As required by law, the Department of Human Services conducted a background study for each adult in the household, including Mr. Buzzard.<sup>12</sup> By letter dated August 17, 2012, the County notified Mr. Buzzard that he was disqualified because of a Fifth Degree Domestic Assault conviction in 2007.<sup>13</sup> He was notified of his right to request reconsideration of the disqualification.<sup>14</sup> The Applicant was also notified of the disqualification.<sup>15</sup> The notice clearly stated that Mr. Buzzard could present information about why the disqualification was inappropriate in this case.<sup>16</sup>

There is no evidence that Mr. Buzzard requested reconsideration of his disqualification. Accordingly, the disqualification was final. By letter dated February 25, 2013, the Applicant was notified that her license was denied because a person living in

---

<sup>4</sup> *Thiele v. Stich*, 424 N.W.2d 580, 583 (Minn. 1988).

<sup>5</sup> *Minnesota Mutual Fire and Casualty Company v. Retrum*, 456 N.W.2d 719, 723 (Minn. Ct. App. 1990).

<sup>6</sup> *Celotex Corp. v. Catrett*, 477 U.S. 317, 106 S. Ct. 2548, 2557, 91 L. Ed. 265 (1986) (dissenting opinion restating majority opinion); *Thiele*, 425 N.W.2d at 583, n. 1.

<sup>7</sup> *Hunt v. IBM Mid America Employees Federal Credit Union*, 384 N.W.2d 853, 855 (Minn. 1986).

<sup>8</sup> *Id.*; *Murphy v. Country House, Inc.*, 240 N.W.2d 507, 512 (Minn. 1986).

<sup>9</sup> Ex. A.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

her household was disqualified.<sup>17</sup> The Applicant appealed the denial.<sup>18</sup> The Applicant did not file any opposition to the Department's Motion for Summary Disposition.

## Analysis

Under Minn. Stat. § 245C.03, subd. 1, the Commissioner shall conduct a background study on a person applying for a license and on any individual age 13 and over living in the household where the licensed program is provided. Mr. Buzzard was required to submit to a background study because he is married to and living with the Applicant.

It is undisputed that Mr. Buzzard was convicted of Fifth Degree Domestic Assault on February 2, 2007.<sup>19</sup> He was not discharged from probation until April 16, 2010. A person is disqualified if "less than seven years have passed since the discharge of the sentence imposed for the offense; and the individual has received a misdemeanor conviction for a violation of any of the following offenses: . . . section 609.2242 (domestic assault). . . ." <sup>20</sup>

Because of this conviction, Benton County notified Mr. Buzzard of his disqualification and the basis for it, and gave him the opportunity to request reconsideration. A request for reconsideration must be made within 30 calendar days from receipt of the notice of disqualification.<sup>21</sup> There is no evidence that the Applicant or Mr. Buzzard made such a request, not does the Applicant dispute the Department's assertion that no such request was made. The Department denied the Applicant's license because of her husband's disqualification. The applicable rule states:

An applicant . . . shall not be issued a license . . . if the applicant . . . or any other person living in the day care residence or present during the hours children are in care, or working with children: . . . D. Has a disqualification under Minnesota statutes, section 245A.04, subd. 3d.<sup>22</sup>

Furthermore, under Minn. Stat. § 245C.24, subd. 3, the Commissioner may not set aside this disqualification for a minimum period of seven years, regardless of whether it is determined that Mr. Buzzard poses a risk of harm. Under this section, the Department is required to disqualify Mr. Buzzard in this matter and no variance has been granted.

Under certain circumstances, the disqualification and the licensing action can be consolidated for hearing. However, none of the bases for requesting a consolidated hearing apply to this case.

---

<sup>17</sup> Ex. B.

<sup>18</sup> *Id.*

<sup>19</sup> Ex. A.

<sup>20</sup> Minn. Stat. § 245A.04, subd. 3d(4).

<sup>21</sup> Minn. Stat. § 245A.04, subd. 3b.

<sup>22</sup> Minn. R. 9502.0335, subp. 6.

The Administrative Law Judge concludes that the Department followed Minnesota law in this matter. The Administrative Law Judge recommends that the Commissioner grant the Department's Motion for Summary Disposition and affirm the Department's denial of the Applicant's child care license application.

**A. J. C.**